



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Ms. Dana W. Wooley
District Attorney
132nd Judicial District
1806 25th Street, Suite 400
Snyder, Texas 79549-2530

OR96-1042

Dear Ms. Wooley:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40395 (previously ID#39289). This office previously sent you a letter referring to a pending open records decision, ORQ-9. However, that opinion has not been issued and this office is required to issue a determination within 80 working days after receipt of your request for a decision. Gov't Code § 552.306. Thus, we will address your request for a decision.

The 132nd Judicial District Community Supervision and Corrections Department (the "department") received a request for information pertaining to the selection of an applicant for a position with the department. You contend that the department is a part of the judiciary and that the requested records therefore are not subject to chapter 552.

Section 552.003(1)(B) of the Government Code excludes the judiciary from the list of governmental bodies that are subject to chapter 552. We note that state courts are responsible for supervising probationers. Section 1 of article 42.12 of the Code of Criminal Procedure provides in pertinent part:

It is the purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas.

In Open Records Decision No. 236 (1980) at 2, this office held that because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, probation officers who act according to the court's direction serve merely as the court's agents in carrying out their supervisory duties and that probationers' records were maintained solely on behalf of the court. Thus, the probation records were not subject to the Open Records Act.

In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court, in determining whether records of a juvenile probation department were subject to the Open Records Act, stated that the proper analysis of whether the judiciary exclusion is applicable should focus on the nature of the body maintaining the records and on the type of information contained in the records. *Id.* The records at issue concerned selection of a chief probation officer, which was not a judicial act by a judicial body, but rather an administrative function of the department. *Id.* at 152. The court concluded that "public scrutiny here of probation officer application qualifications works toward proper selection considerations by the Board, and, hence, toward employment of qualified officers." See also Attorney General Opinion DM-395 (1996).

We believe that *Benavides* is applicable in this situation. Thus, the records at issue are generally subject to disclosure under chapter 552 unless otherwise excepted from disclosure. Gov't Code § 552.006. We note that you have not asserted that the records fall within a chapter 552 exception to disclosure. You also did not seek a decision from this office until more than three months after the initial request for information. Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. See Open Records Decision No. 150 (1977) (presumption of openness overcome by showing

information was made confidential by other law or affects third party interests). We note that the only information on the documents submitted to this office that may be confidential is the home address and home telephone number of an employee as listed on a resume.¹

Sections 552.024 and 552.117 provide that a public employee can opt to keep private the employee's home address, home telephone number, social security number, or information that reveals that the individual has family members. The information you submitted for review contains social security numbers, home telephone numbers, and home addresses of some employees. You therefore must withhold the employee's home address and home telephone number if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). The other information at issue must be disclosed.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Re: ID# 40395 (previously ID# 39289)

Enclosures: Submitted documents

cc: Mr. Douglas H. Merritt

¹You submitted a sample of the information requested to this office for review. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.